

Chan.]

NOTES OF CASES.

[C. L. Cham.

would be the duty of the Court to direct it; and although there may not exist any cogent reason for requiring the bill to be in that form in this country, still the practice of the Court here having been uniform in following the English rule it would now require the decision of a higher tribunal to alter it. The same reasoning which requires that, in proceeding against a living debtor, a creditor without a lien must sue on behalf of all others applies with equal force where the suit is against the representatives of a deceased debtor.

Longeway v. Mitchell, 17 Gr. 190, observed upon and followed.

BOLTON V. BAILEY.

Proudfoot, V. C.]

[June 14.]

Will, Construction of—Gift to a class—Lapsed legacy.

A testator, after sundry bequests and devises, amongst others an estate for life in all his lands to his widow, devised the same lands to trustees upon trust, within two years after the death of his widow, to sell and dispose thereof, to execute deeds and to give receipts, &c., and "after the sale of my said real estate I give and bequeath the proceeds of such sale or sales to my nephew, G. B., son of my brother Joseph, and to the following children of my brother George (naming them) equally share and share alike, male and female, without exception, when they respectively attain the age of twenty-one, to them, their heirs and assigns; and in the event of any of my legatees dying before getting their share or portion as aforesaid leaving child or children, in such case the child or children of any so dying shall inherit the share of the deceased parent." One of the nephews died during the life-time of the widow without issue.

Held, That there was no bequest of anything until the sale had taken place; that the bequest was one of personalty, not of realty; that no interest vested in such deceased nephew, as he did not live till the time of sale; that the gift was not a gift to a class; and, there being no residuary clause in the will, that the share of such

deceased nephew lapsed and passed to the next of kin of the testator, and not to the legatee of the nephew.

COMMON LAW CHAMBERS.

MASURET V. LANSDELL.

Mr. Dalton.] [May 25.]

Interpleader—County Court writs—Costs.

Several executions from different County Courts having been placed in the Sheriff's hands on an interpleader application to the Superior Court. *Held*, that all costs, including those of the Sheriff, should be taxed on the County Court scale.

This was an interpleader application for the Sheriff of Norfolk. Several writs of *fi. fa.* from different County Courts had been placed in the sheriff's hands, and the present application was made in the Superior Court under R. S. O., ch. 54, sec. 12. Issues having been directed, *Smellie*, for the sheriff, asked Superior Court costs; the execution creditors and the claimant contended that all costs in the matter should be taxed on the County Court scale, although the application was made in the Superior Court, as all the writs had been issued out of County Courts.

Held, that the sheriff was entitled to County Court costs only, and that the costs of the issues directed should be taxed on the same scale.

CORCORAN V. ROBB.

Mr. Dalton.]

Libel—Plea of justification—Particulars.

In an action of libel the plaintiff alleged that the defendant had accused him in a newspaper article of having made false returns to the Government in his business of distiller. To this the defendant pleaded justification.

Held that the plaintiff was entitled to particulars of the defence intended to be set up under this plea.

BOOTH V. WALTON.

Mr. Dalton.] [June 17.]

Stay of execution—Set off of judgments.

The plaintiff Booth was engaged by the