(Creswell, J.—I should say the true principle would be that we cannot grant an interpleader, unless the question to be tried is the same question as would be tried between the original parties.) *Cretland v. Leyland*, 6 Jur. 733; *Frost v. Hayward*, 12 L. J. Ex. 242; *Newton v. Moody* is clearly distinguishable, for then the defendant had an interest. (Cockburn, C. J.—How can we decide that question against the present holder, thereby depriving him of having his right decided by the highest authority?) *Prestwicke v. Marshall*, 4 C. & P. 594: (see 5 M. & P. 513, and 7 Bing. 565.)

Cockburn, C. J.—We think that this rule ought to be discharged. It is unnecessary to express any opinion as to whether the case is within the Interpleader Act. It is sufficient to say that this is not a case in which we think we should comply with the application. It is impossible to frame any issue in which the question which the applicant desires to raise, could properly be decided—the question whether the acceptors are not estopped from denying the right to endorse. It is clear that it could not be raised between these parties. We think this is a question which we ought not to decide in this manner. We do not think we could make the rule absolute without doing injustice.

Creswell, J.—I am entirely of the same opinion. There is a good deal of authority for saying that this is not a case within the Act. The recital in the Act is very precise. Here you are seeking to recover money which is his own, and in which he has a great interest. There is another question with reference to the nature of the nature of the contract, whether he (they) has (have) not entered into a contract to pay to the holder of the bill. I think we have no right to put it on a simple issue between two parties which has the right.

Crowder, J.—I also think that it is doubtful whether this application is within the Interpleader Act; but as there is discretionary power, I think in this case we ought to refuse it. I think if we granted this application, it would be impossible to frame an interpleader issue so as to try the real question between the parties.

Willes, J.—Not having heard the whole of the argument, I give no opinion.

[Rule discharged as against Abraham with costs. Costs as between plaintiff and defendant to be costs in the cause.]

EX. Matthew v. Blackmore. *Feb.* 11.

Covenant—Qualified covenant to pay—Money lent.

The defendant, an executor and trustee, borrowed £200 from the plaintiff, secured by a deed, in which, after reciting that one S., mortgagee of certain trust property, had assigned the same to the plaintiff, and that defendant had occasion for £200 to pay off debts of his testator, which the plaintiff had agreed to advance on the security of the mortgaged premises, the indenture witnessed that the defendant charged the mortgaged premises with the £200: and the defendant covenanted out of the monies which should come to his hands as such trustee of the lands compromised in the security, or the personal estate of his testator, to pay the plaintiff the principal sum and interest. The indenture contained no other covenant for payment: *Held*, that a promise to pay on demand could not be implied, as it was inconsistent with the covenant, and that the plaintiff could not therefore maintain an action for money lent.

Q.B. Murgatroyd v. Robinson. *Feb.* 3, 24.

Easement—Prescription insufficiently alleged—Right of throwing rubbish into stream—Suggestion under C. L. P. Act, 1852, *section* 143.

To a declaration for throwing into a stream near a mile off the defendant quantities of rubbish, so as to be carried down the stream into a mill-pond of the plaintiff, and by choking it up to obstruct his mill, the defendant pleaded as to the throwing, a right by prescription to throw into the stream near his mill the ashes and sweepings necessarily arising there, identifying with these the rubbish complained of. The plea however did not contain an averment, that, during the period of prescription, the rubbish had been carried down to the plaintiff's mill in the manner alleged in the declaration. Verdict having been given for the defendant on this plea, it was

Held, that the plaintiff was entitled to judgment *non obstante veredicto*: but on an affidavit, that the fact was proved at the trial, the rule was suspended to allow the defendant to apply for leave under sec. 143 of the Common Law Procedure Act, 1852, to add a suggestion to the fact of the omitted averment.

Quære, supposing this averment to have been inserted, whether the plea would have been good.(a)

EX. Hunson v. Hall and another. *Feb.* 11.

Pleading—Equitable plea—Set-off of damages.

For an action to recover the balance of an account for the porterage of goods, the defendant, on equitable grounds, claimed to set off against the plaintiff's demand the cost price of goods lost by the negligence of the plaintiff during the currency of the account. *Held*. that it afforded no defence.

B.C. Evans v. Matthews. *Jan.* 31, *Feb.* 24.

County Court—Notice of Appeal, statement of grounds in—Jurisdiction—Rule 141—13 *&* 14 *Vic., cap.* 61, *sec.* 14—*Constructive service—Second notice*

In County Court appeals, the statement of the grounds in the notice of appeal mentioned in rule 141 is not a condition precedent to the jurisdiction of the Superior Court to hear the appeal, but a requirement for the information of the Court below:

The plaintiff, in an action against two defendants, served a notice of appeal on all the parties: but it did not state the grounds. He then, within the 10 days mentioned in the County Courts Act, served a second notice, stating the grounds, on the registrar and on one of the defendants, and on the tenth day posted to the other defendant the same notice, which, according to the course of the post, ought to have been delivered the same evening, but was not received till the 11th day. The plaintiffs also within the 10 days, also attempted to serve the notice on the defendants attorney, but the office was shut up (as it was to be presumed from the affidavits) for the purpose of preventing such service. The parties afterwards went before the County Court Judge, who properly signed the case for appeal, but the respondent then protested that the notice of appeal was insufficient.

Held, upon the facts above, that the Superior Court had jurisdiction to hear the appeal, and that there was no sufficient irregularity in the notice of appeal to take away such jurisdiction.

Semble, also, that if the second notice of appeal which the plaintiff endeavored to serve on the respondent's attorney, had under the circumstances been left outside his office, such service would have been valid.

NOTICES OF NEW LAW BOOKS.

The Statutes of Practical Utility on the Administration of Justice in Upper Canada, *from the first Act passed in Upper Canada to the Common Law Procedure Act*, 1856, *chronologically arranged, and showing such as have been actually repealed or otherwise abrogated, with an Index: the whole intended as a circuit companion. Edited by* Robert A. Harrison, *Esq., B.C.L., Barrister-at-Law.—Toronto, Maclear & Co., Publishers.*

This is a very useful publication, and one that will be very welcome to practitioners and others. It contains all the Sta-

(a) *Semble*, that it would.