M. R. JACQUET v. JACQUET. *June* 15.

Will—Trust for payment of debts—Practice—Adjourned summons.

Testator directed that his executors should dispose of C estate, and that their receipts should be a discharge to the purchaser, the monies arising from the sale thereof, to be applied to the liquidation of his debts and the overplus to fall into his residue.

Held, that a trust for payment of debts was thereby created.

M. R. *June* 7.

BROMLEY v. SMITH, SMITH v. BROMLEY, BOUSTED v. BROMLEY.

Expectant heir—Setting aside transactions—Costs.

The rule that the burden of proving the fairness of a dealing with an expectant heir lies on the person so dealing, held applicable to a case where the dealing was not a sale, but a charge, where the heir was of mature age, and fully understood the nature of the transaction, and had himself been guilty of misrepresentations in the matter, which, however, did not appear to have been relied on. Limits of the rule that a bill charging fraud which is not proved, must be dismissed with costs, discussed.

Decree made in favor of the heir without costs, and so much of the bill as charged conspiracy dismissed with costs.

V. C. W. CAMPBELL v. BEAUFOY. *May* 30.

Domicil—Will—Executor—Plea.

To a bill by a legatee against the executor who has proved the will in England it is a valid plea that the testator was domiciled in a foreign country, and that by the laws of that country the dispositions contained in the will are void; the grant of probate being conclusive as to the validity of the instrument, *qua* will, but not as to the validity of its contents.

V. C. W. DUIGNAN v. WALKER. *June*, 16.

Agreement—Carrying on business within certain distance—Mode of measuring

Under an agreement not to carry on business within seven miles of a certain place, the distance must be measured in a straight line upon a horizontal plane, and not by the nearest practicable mode of access.

V. C. W SCOTT v. MILLER. *May*, 30.

Witness—Privilege.

A defendant claiming to be privileged from giving the discovery required by the answer, must swear positively to his belief that his answer would or might tend to subject him to penalties.

Upon exceptions to answer the Court had held, that the defendant (a solicitor) could not protect himself from answering in respect of an agreement sought to be enforced by the bill, on the ground that he would be thereby subjecting himself to penalities under 6 and 7 Vic., c. 73, the agreement as stated in the bill being perfectly innocent.

In his further answer, the defendant "submitted" that he was not bound to give the discovery sought, because it "would or might show or tend to show," that, under 6 & 7 Vic., c. 73, he was liable to be struck off the roll.

Held, that this further answer was insufficient, the defendant not having pledged his belief that his answer in respect of the agreement, which had been held to be innocent, would criminate him.

COMMON LAW.

Q. B. POOLE v. KNOTT. *May* 31.

Public company—Liability of executor of deceased shareholder.

Where the Act of Parliament which constituted a public company, provided that the shareholders should continue liable for the debts of the company, as they would have been if the Company had not been incorporated; and that, if execution could not be obtained against the property and effects of the Company, there execution might be issued against the person, property and effects of any shareholder, or any former shareholder who was such at the time of the obligation being incurred or being still in existence.

Held, that this did not admit of execution being issued against the executor of a shareholder who had died before the judgment and had been recovered against the company, but who was a shareholder when the obligation was created, and continued to be so, up to the time of his death.

Q. B. MILLER v. MYNN AND OTHERS. *June* 2.

Common Law Procedure Act 1854, *sec.* 61—*Attachment of debts.*

If a judgment be recovered against three, the debts owing and accruing to two of the judgment debtors, out of the three may be attached to answer the judgment debt; the proceeding under sec. 61 of 17 & 18 vic. c. 125, being analogeous to execution by *fieri facias*.

EX. C. ROBERTS v. BRETT. *May*, 16.

Covenant—Condition precedent—Assignment of breaches—Construction.

Plaintiff covenanted among other things "forthwith" to procure a vessel and stow a cable on board at a certain wharf, and to have her ready for sea before the 15th July, and defendant covenanted to provide the cable, and to pay plaintiff £5,000 by instalments of £1,000 seven days after the arrival of the vessel at the wharf, and the other instalments at other times with other covenants, and it was mutually agreed that each party should within ten days of the execution of the agreement, give and execute to the other a bond with two sureties in the sum of £5,000 for the due performance of the covenants on his part.

In an action on this agreement the breach assigned being the non-providing of the cable by the defendant, &c.

Held, affirming the judgment of the Common Pleas that the giving of the bond was a condition precedent to plaintiff's right to sue upon the contract.

A breach was thus expressed, after stating that plaintiff was ready and willing to stow the cable above mentioned, but before the time arrived for so doing according to the terms of the said contract the defendant refused to perform the said contract, on his part and dispensed with the said vessel being brought alongside the said wharf. The plaintiff then averred general performance of all conditions precedent, after which he said "yet the defendant did not nor would stow," &c.

Held, that in a declaration so worded the real breach followed the word "yet," and that the words preceding did not set up as a breach, the dispensation by the defendant of plaintiff's performance of condition precedent, but was only intended as inductive to the real breach following the word "yet."

EX. HICKIE v. RODACONADIS. *May* 11.

Ship—Total loss—Benefit of freight earned by forwarding cargo in other ship.

The under writers of a policy on a ship for a certain voyage are not entitled to any deduction in respect of freight earned by forwarding the cargo in another ship after a total loss of the ship insured, in course of the voyage.

EX. BETTS v. BURCH. *May* 11.

Damages—Penalty or liquidated damages—Sum stipulated to be paid on breach of agreement—Agreement to purchase furniture at a valuation.

By an agreement for the purchase of furniture and stock in trade according to a valuation, it was provided that the goods should be valued and possession given on or before the 13th October 1858, and in the event of either of the parties not complying with every particular set forth in the agreement he should forfeit and pay the sum of £50 and all expenses attending the same.

Held, that the £50 was in the nature of a penalty and was not recoverable as liquidated damages upon breach of the agreement