

COMMENTS ON CURRENT ENGLISH DECISIONS.

The *Law Reports* for November comprise 21 Q. B. D. pp. 413-460 ; 13 P. D. pp. 157-166 ; and 39 Chy. D. pp. 81-186.

PRACTICE—SPECIALLY INDORSED WRIT—BOND—PENALTY—8 & 9 Wm. III. c. 11, s. 8.

*Tutler v. Caralampi*, 21 Q. B. D. 414, is a case which deals with a point of practice, which is not very clearly defined under our Consolidated Rules. The writ in the action was indorsed with a claim for £500, as the principal sum due on a bond conditioned for the payment by the obligor to the plaintiff, of an annuity of £26 during the life of a child, and until she should attain sixteen, by quarterly payments; and alleged that two of such payments were in default. Charles, J., had rescinded the order of a Master allowing the plaintiff to sign final payment, under Ord. 14, r. 1, and from this decision the plaintiff appealed to the Divisional Court, contending that the debt sued for was a liquidated demand, for which the plaintiff was entitled to sign judgment, there being no defence. But the court (Lord Coleridge, C.J., and Hawkins, J.) dismissed the appeal, holding that the provisions of 8 & 9 Wm. III. c. 11, s. 8, constituted a special procedure in such cases, which was intended to be saved by Ord. 13, r. 14, which provides, "where the writ is indorsed with a claim or a bond within 8 & 9 Wm. III. c. 11, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said statute, and in 3 & 4 Wm. IV. c. 42, s. 16." As we have neither a rule in force similar to the English rule, Ord. 13, r. 14, or the last mentioned statute, it is somewhat difficult to know what the practice in such cases is in this Province. It certainly seems objectionable, and contrary to justice, that the plaintiff should be at liberty to enter judgment, and issue execution for the full amount of the penalty. Such an action, notwithstanding its form, should, we are inclined to think, be either proceeded with as a claim for unliquidated damages, which should be assessed in the usual way, before final judgment is entered; or, if judgment be entered by default for the full amount of the penalty, there should be a suggestion of breaches, and an assessment of damages thereon before execution can properly issue. Although it must be confessed, as all former practice has been abolished, and no other provided to meet the case, it is hard to say what is the proper course.

HUSBAND AND WIFE—AGREEMENT FOR SEPARATION—POWER OF HUSBAND AND WIFE TO CONTRACT WITHOUT THE INTERVENTION OF A TRUSTEE—AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR—STATUTE OF FRAUDS, (29 CAR. II. c. 3, s. 4).

*McGregor v. McGregor*, 21 Q. B. D. 424, was an action by a wife to recover a sum agreed to be paid by her husband for her separate maintenance. The parties had taken out summonses against each other for assault, and had subsequently compromised the matter, and agreed to live apart, the husband agreeing