

RECENT ENGLISH PRACTICE CASES.

deceased's personal estate. There was also an interrogatory as to the deceased's real estate.

The objection to answer these two interrogatories taken was, that they were not material at that stage of the action. The point was argued on the former interrogatory.

Counsel for the motion said that neither the reasons for giving the discovery, nor the practice in allowing it had been changed by the Judicature Act, (notwithstanding Imp. O. 31, r. 5, a rule not adopted in Ontario.) He cited *Saunders v. Jones*, 47 L. J. R., Ch. 440, L. R. 7 Ch. D. 435; and also *Thompson v. Dunn*, L. R. 5 Ch. 573; *Elmer v. Creasy*, 43 L. J. R. Ch. 166; L. R. 9 Ch. 69; *Sault v. Browne*, 43 L. J. R. Ch. 588; L. R. 9 Ch. 364.

FRY, J., after having determined that the interrogatory must be answered, said,—As this is an important point of practice, I will give my reasons. The interrogatory to which exception is taken, as being immaterial and not sufficiently relevant at this stage, is the old enquiry as to personal estate in administration suits. It is said that of late years, and I am glad to hear it, such interrogatories are not so frequent. The question is, whether the beneficiaries have lost the right of discovery which they had. In my opinion they have not. I will only refer to the case of *Thompson v. Dunn*, where Lord Hatherley expressed his opinion. * * * * * It appears to me that there is nothing whatever to which my attention has been called which deprives beneficiaries of that right against the executors. Furthermore it is important at this stage of the action to have the discovery for two purposes: in the first place the plaintiff may desire to move to have the funds paid into court; in the next place the account may satisfy him, and he may desire to discontinue the action. That interrogatory will therefore be allowed.

HASTINGS V. HURLEY.

Imp. O. 9, r. 13; O. 11, r. 1; O. 57, r. 6; Ont. O. 6, r. 12 (No. 44); O. 7, r. 1 (No. 45); O. 52, r. 9 (No. 462).—Time—Extension—Service out of jurisdiction.

The time for endorsing the date of service on a writ served in the United States, was extended for a month from the application.

[Ch. D., March 8—50 L. J. R. 577.

This was a foreclosure action in which the

writ had, under an order obtained for the purpose, been duly served on one of the defendants in the United States by the British Consul on Feb. 10th, who, however, had omitted to indorse the day of service on the writ.

Vernon Smith, for the plaintiff, applied by motion for an extension of the time limited to three days from service by Imp. O. 9, r. 13 for making the indorsement.

FRY, J., extended the time for a month from the present day, but required the consul to make a fresh affidavit of service.

[NOTE.—*Imp. O. 57, r. 6, and Ont. O. 52, r. 9, are identical. Imp. O. 11, r. 1, and Ont. O. 7, r. 1, are virtually identical. Imp. O. 9, r. 13, and Ont. O. 6, r. 12, are identical, excepting that the former declares absolutely that if the date of service is not endorsed on the writ within 3 days, the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default, whereas the latter adds: "without the leave of a judge, such leave to be obtained at the cost of plaintiff, and such cost to be in no event charged against the defendant."*]

IN RE WADE AND THOMAS.

Taxation—Copies of documents—Mortgagee or transferee.

[Ch. D., April 28—50 L. J. R. 602.

A mortgagee or transferee of a mortgage who is being paid off, has a right, until the transaction is completed, to keep one fair copy only of the draft deed of reconveyance or transfer, and to charge the mortgagor for making it; but on payment off he is bound to hand over that and all other copies of documents relating to the property to the mortgagor.

[NOTE.—*There is, in this case, a somewhat long judgment of the M. R., but the above note of the result appears all that is needed in this place.*]

SCHNEIDER V. BATT and Co. PANWELLS (third party.)

Imp. Jud. Act. 1873. s. 24. sub. 3; O. 16, r. 17, 18—Ont. Jud. Act. s. 16. subs. 4; O. 12, r. 19, 20 (Nos. 107, 108).—Bringing in third party—Position of third party when the whole matter cannot be disposed of by one trial.

In action against the defendants for breach of con-