

## RECENT ENGLISH DECISIONS.

lease did not confer any new title, but merely removed a bar to the assertion of a pre-existing title, and consequently that the property recovered by setting aside the release was not "after-acquired property," and therefore not bound by the covenant.

## PRACTICE—PLACE OF TRIAL—STATEMENT OF CLAIM.

The Court of Appeal in *Locke v. White*, 33 Chy. D. 308, came to a similar conclusion on a point of practice to that which had already been arrived at in this Province in *Bull v. The North British C. I. Co.*, 10 P. R. 622, viz.: that a plaintiff if he omits to name a place of trial in his original statement of claim, cannot supply the omission as of course in an amended statement of claim; and if he has named a place of trial in the original statement of claim he cannot alter it as of course in an amended statement of claim. In any such case the order of the court or a judge must be obtained.

## PRACTICE—WINDING UP—COMPANIES ACT, 1862, s. 115—(45 VICT. c. 23, s. 82 [D.])—EXAMINATION OF DIRECTORS.

The case of *In re Imperial Continental Water Corporation*, 33 Chy. D. 314, establishes that where a person has brought an action against a company and the directors for some relief personal to himself, he cannot avail himself of the provisions of the Winding-up Act, which enables the court to direct the examination of parties capable of giving information as to the affairs of the company for the purpose of assisting him in his private litigation. Where such an action was brought by a contributory, and, before issue joined, he obtained an order, in certain winding-up proceedings which were pending against the company, for the examination of the directors, under the provisions of the Companies Act, 1862, s. 115 (see 45 Vict. c. 23, s. 82 [D.]), on the application of the directors the examination was stayed by Chitty, J., until after the trial of the action, and this order was affirmed by the Court of Appeal.

## ACTION FOR RECOVERY OF LAND—DISCOVERY—TITLE DEEDS—PURCHASE FOR VALUE WITHOUT NOTICE.

In *Emmerson v. Ind.*, 33 Chy. D. 323, the plaintiff as devisee brought the action to recover possession of the land devised. The defendants by their statement of defence pleaded (1) Possession. (2) Purchase for value without notice. By their affidavit on production they objected to produce certain docu-

ments on the ground that they were purchasers for value without notice, and certain others on the ground that they did not prove or tend to prove the case or title of the plaintiffs. Chitty, J., held that both classes of documents were privileged from production. But the Court of Appeal determined that the defendants by pleading possession, had put the plaintiff to proof of her title, that she had the ordinary right of a plaintiff to discovery of matters tending to support her title, and that the defendants could not resist production on the ground of their being purchasers for value without notice. But it was held that these documents which were sworn not to prove or tend to prove the plaintiff's case, were sufficiently protected, though the affidavit did not go on to state that they did not contain anything to impeach the title of the defendants. As to the latter point Cotton, L.J., says at p. 329:

They have not indeed deposed that these documents do not contain anything to impeach the defendants with, but, in my opinion, it was not necessary that they should say so, for a plaintiff must recover by the strength of his own title, and is not entitled to discovery for the sole purpose of showing that the defendant has not a title.

As to the former point the reasoning of the Court of Appeal may be gathered from the following remarks of Lopes, L.J., at p. 331:

It is easy to see why a plea of purchase for value without notice should be a defence to a bill for discovery, because on such pleadings nothing would be in issue but the fact of purchase for value without notice—the plaintiff's title would be admitted, and he could not have any right to discovery, except for the purpose of disproving the plea. Here the plea of possession puts the plaintiff to proof of her title *in omnibus*, and the defendants are not entitled to the same privileges as in a proceeding where they admit the plaintiff's title.

## CHARITY—MORTMAIN—HARBOUR TOLLS—INTEREST IN LAND.

The question in *re Christmas, Martin v. Lacon*, 33 Chy. D. 332, for the consideration of the court, was whether a bond made by harbour commissioners in pursuance of a statute assigning tolls which they were empowered to levy on ships, and which were to be applied by them in payment (1) of the expenses of obtaining the Act relating to the harbour. (2) The interest of any money which should have been advanced for defraying such expenses. (3) The interest on any money borrowed and then due under repealed acts. (4) The ex-