Court Sitting 16th July.—No. of Suits, 82.

Lewis v. Munser, *et al.*, claim $52 17. Ordered, that claim be paid 30th September following, by consent of parties—no payment made, and no further proceedings had.

Schafer v. Mehring, claim $20 66. Withdrawn.

Court Sitting 23rd September.—No. of Suits, 220.

No Judgment Summons issued.

Court Sitting 4th November.—No. of Suits, 171.

Funk v. Hohmeier, claim $13 80. Dismissed.

1858. RECAPITULATION.

Jan.....	5	Judgmt.	Sum.,	aggregate claims,	$112 81—123	Suits.
Feb....	3	"	"	"	186 80—271	"
March.	1	"	"	"	12 60—181	"
May ...	7	"	"	"	87 21—162	"
July ...	2	"	"	"	70 83— 82	"
Sept....	–	"	"	"	220	"
Nov ...	1	"	"	"	13 80— 71	"
Total	19	"	"	"	$484 05 1110	

2 Warrants issued—none committed.

Court Sitting 21st January, 1859.—No. of Suits, 137.

No Judgment Summons issued.

Court Sitting 3rd March.—No. of Suits, 98.

Caulfield & Flemming v. Eisenmenger, claim $7 75. Withdrawn.

Do. do. v. Baker, claim $22 08. By Defendant's consent and *effer*, ordered, that claim be paid 1st July, 1859. Subsequently settled.

Zoeger v. Hamer, claim $13 20. Withdrawn.

Winger *et. al.* v. Welsh, claim $39 00. Ordered to be imprisoned 20 days, for refusing to give up property in his possession, in the nature of claim on third party. No Warrant. Settled.

Court Sitting 19th May.—No. of Suits, 127.

Zoeger v. Rush, claim $14 95. Withdrawn.

Doering v. Campbell, claim $40 95. Withdrawn.

1859. RECAPITULATION.

Jan.....	No Judgment Summons.				137	Suits.
March.	4	Judgment	Summonses	claims	$82 03— 98	"
May ...	2	"	"	"	55 60—127	"
Total	6	"	"	"	$137 63 362	
1858—12 mo.—19 Judg. S. for					$488 05 claims, No. of Suits	1110
1859— 6 " — 6		"	"	"	137 60 " " "	362
Grand Total	25	"	"	"	$625 65 " " "	1472

No committal made.

I have endeavoured to make the statement so full, that you could understand to what extent the 91st clause has been oppressively administered in this Court. By giving a history of the parties connected with these suits, you would perceive that it was the plaintiffs who had greatest cause of complaint. According to some of the articles published against this clause, the creditors have been the dishonest and disobliging parties; that the debtors, after enjoying the use of the goods furnished them, appear to be the innocent, wronged, and suffering parties, and that the judges have acted cruel and oppressive in administering the law. Whatever may be the facts in other localities, such has certainly not been the case here.

I may just add, that the 91st clause, has had the effect of making many a man pay debts, who was able to do so, and who would have availed himself of some shift to avoid paying but from fear of a Judgment Summons. The clause is, therefore, useful, and should not be repealed.

Your obedient servant,

M. P. EMPEY,

Clerk, 6th D. C., C. Waterloo.

U. C. REPORTS.

COURT OF ERROR AND APPEAL.

(Reported by THOMAS HODGINS, Esq., LL. B., Barrister at law.)

BECKIT v. WRAGG.

(*Concluded from page 186.*)

SPRAGGE, V. C.—I have arrived at the same conclusion as a majority of the members of this Court, retaining the same opinion as in the Court below, namely, that the Bill should be dismissed, but I do not come to this conclusion upon the same grounds as most of the other members of this Court, so far at least as their judgment proceeds upon this, that cases of express trust are within the Dormant Equities Act.

I cannot bring myself to the conclusion that express trusts are within the act. If they were, then if Willard were defendant instead of Wragg, the bill must have been dismissed as against him, and this even though the breach of trust had occurred just before the passing of the Act. But the language of the Act appears to me to be inapplicable to the case of express trusts, looking at that which is to be affected, and the grounds upon which it is to be affected. If within the Act, the thing to be affected is the title to real estate in the trustee which is valid at law. The provision of the statute is, that such title shall not be disturbed or affected by any thing which arose before the passing of the Chancery Act 1837. Suppose the section had ended there, and suppose a Bill filed against an express trustee for a breach of trust occuring before 1837, could it with any propriety be said that the title of the trustee in the legal estate was sought to be affected by reason of the breach of trust? In truth the title of the trustee would not be sought to be affected at all: but the existence of that title and the position in which it placed the holder of it relatively in his *cestui que trust* would be the plaintiff's *locus standi* in court. The clause goes on to provide that such legal title shall not be disturbed or affected for the purpose of giving effect to any equitable claim, interest or estate which arose before the same date 1837: now to take this literally and apply it to the case of express trusts would make it necessarily apply to every case where the trust was created before 1837, however recently the breach of trust had occurred, or even if no breach of trust had occurred: for to a Bill filed complaining of a breach of trust or simply calling for an account of the Trust estate, the short answer would be, this Bill is filed for the purpose of giving effect to an equitable claim, interest, or estate which arose before the passing of the Chancery Act.

The concluding words of the section exempting from the protection of the act, cases where there has been actual and positive fraud in the party whose title is sought to be disturbed or affected, would still have the *cestui que trust* remediless in large classes of cases, *e. g*, the common case of calling for an account of rents and profits; the case of the legal estate devolving upon the heir at law of the original trustee, and others might be suggested cases, where the right of the *cestui que trust* to relief, is indisputably clear.

Take the case of a trust created by will or marriage settlement before 1837, to sell lands upon the youngest of several infants becoming of age; or afterwards, in the discretion of trustees. The right of suit might be barred, if express trusts are within the act, before even any right of suit accrued, for not carrying out the trusts, for there is nothing in the clause to make the statute apply only to cases where there was a breach of trust before the passing of the act, or where the legal estate became vested in the trustee by a breach of trust; and we cannot say that it shall apply only in such cases. If it applied to cases of express trust at all it must apply in the cases which I have suggested. But not only would the consequence of so applying it be nothing less than monstrous but for the reasons which I have offered. The language of the clause is as it appears to me, altogether inapplicable to cases of express trust.

Other reasons were urged upon the same point by Mr. Bennett one of the counsel for the plaintiff in the *Attorney General v. Grasett*, (the Hospital case) which appear to me to be sound and weighty. He argued that the statute dealt only with adverse estates when there was on the one hand an estate in land valid at