and by the act of Geo. II., plantations in Jamaica are converted with respect to the payment of debts, into personal assets, and as such are possessed by the executor. The property is personal assets and in all respects to be administered as such." But see as to this, *Bullen* v. *A'Beckett*, already cited. Such a state of the law would not help the present plaintiff, as if the executors could sell they could make a perfect title.

I concur in the result of the Chief Justice's judgment. The case cited before Sir J. Romilly is much in point. I refer also to *Pim* v. *Insall*, 1 McN. & G. 449, 458, *Re Hamer's Devisees*, 2 DeG. McN. & G. 366.

The statute on which these decisions rest is of course much more explicit in its directions than the 5 Geo. II., ch. 7. But I do not at present see any practical difficulty in our court of equity administering the estate, and fully effectuating the legal rights of the creditors against the lands, just as the English courts act under 3 & 4 Wm. IV.

Morrison, J., concurred.

Rule discharged.

COMMON PLEAS.

(*Reported by* S. J. Vankoughnet, Esq., M.A., *Barrister-at-Law, Reporter to the Court.*)

Reeves v. Eppes.

Issue Books—Practice.

Con. Stat. cap. 22, sec. 203, which enacts that the *nisi prius* record shall be passed and signed, does not supersede the rule of court requiring the service of an issue-book with the notice of trial; and such issue-book must therefore still be served. [C. P. M. T., 1865].

On the 16th of October, 1865, notice of trial for the assizes to be held at Belleville, in and for the county of Hastings, on the 3rd day of November then next, had been served on the defendant's attorney without any issue-book; but on the 2nd day of November the issue was served. It was at once returned with a notice that the defendant would apply to set aside the notice of trial, on the ground that no issue-book had been served with the latter, and that if the plaintiff proceeded with the trial, the defendant would move to set aside the verdict obtained thereat.

The plaintiff did, notwithstanding this notice, take a verdict on the 8th day of November, before the Chief Justice for Upper Canada, in the absence of the defendant.

J. B. Read obtained a rule *nisi* in the Practice Court returnable in this court, calling upon the plaintiff to shew cause why the notice of trial and all the proceedings thereon should not be set aside for irregularity with costs, on the ground that no issue-book had been served therewith, or had been delivered until a day or two before the day of assizes; or why the verdict obtained should not be set aside for irregularity with costs on the grounds above mentioned.

J. A. Boyd shewed cause.—Rule 19 of the rules made in Easter term, 5 Vic., dispensed with the necessity of serving issue-books. Afterwards the 19 Vic. cap. 43, sec. 154, enacted that the *nisi prius* record should not be sealed or passed; but by section 313 the courts were authorised to make new rules for the purpose of carrying the act into effect, in pursuance of which the rules of Trinity term, 1856, were made. By these all former rules were annulled, and rule 33 required issue-books to be served, and gave the forms in the schedule. By 22 Vic. cap. 22, sec. 203, it is enacted that the *nisi prius* record need not be sealed, but shall be passed and signed by the clerk or deputy clerk of the Crown. From the 19 Vic. till the 22 Vic. it was properly required that issue-books should be served, because the defendant had no means of knowing in what shape the record would be made up; but after the passing of the act, 22 Vic. cap. 22, the necessity ceased, for the record could not be returned until passed and signed by the proper officer, and "*cessante ratione, cessat lex*," and therefore there is no necessity for serving the issue-book. He cited *Carruthers* v. *Rykert*, 7 U. C. L. J. 184; *Boulton* v. *Jones*, 10 U. C. L. J. 46; *Harrington* v. *Fall*, 16 U.C.C.P.; *Jones* v. *Elliott*, 1 U. C. L. J. N. S. 156; *Scott* v. *McGregor*, Tay. Rep. 110; *McLean* v. *Nelson*, Rob. & Har. Dig. Tit. "Record;" *Lucas* v. *Peatman*, 7 U. C. Q. B. 20; *Bonter* v. *Pretty*, 9 U. C. C. P. 273; *Jones* v. *Holdsworth*, 16 L. T. 325.

J. B. Read, contra, contended that it was still necessary to serve issue-books. He cited *Skelsey* v. *Manning*, 8 U. C. L. J. 166; *Smith* v. *Jennings*, 9 Dowl. 154; *Doe dem Cotterrill* v. *Wyld*, 2 B. & A. 472; *Codrington* v. *Lloyd*, 8 A. & E. 449; *Combe* v. *Pitt*, 3 Burr. 1682.

J. Wilson, J., delivered the judgment of the court.

When the *nisi prius* record was allowed to be made up and entered for trial *ex parte* without being examined and certified by the officer having the custody of the original pleadings, the defendant had no means of knowing whether it had been correctly made up, until it was entered. Hence arose the necessity for having issue-books served with the notice of trial. By our old practice the record was always examined and passed. This the legislature has so far revived as to require it to be passed and signed; but, we think, it did not by implication annul the rule of court requiring the issue-book to be served. We incline the more to this opinion from the fact that by the 313th section of the 19 Vic. cap. 43, which authorised the making of these rules, they were required to be laid before both Houses of Parliament, and had no effect till three months thereafter; but that afterwards they should be of like force and effect as if the provisions contained in them had been expressly enacted by the Parliament of this province. We assume the legislature had these rules in view, and that it was intended to superadd to them *that the record should be passed and signed.* The argument for the plaintiff was based upon the maxim, *cessante ratione legis, cessat ipsa lex;* but this maxim applies to common law, not to statute law, (Dwarris on Statutes), and is not of universal application.

We were asked to grant this rule without costs, if our opinion were adverse to the plaintiff. We have considered this, and think we should not be exercising a wise discretion in allowing the plaintiff to question with impunity a long and well-established practice. On the contrary, we think that if he chose to do it, to