

RECENT ENGLISH PRACTICE CASES.

"I think that the general direction should be confined to matters arising on the report of June 14th, 1881. If before the order is drawn up, it is found that there are matters provided for by the previous reports which have still to be attended to, the petition can be amended for the purpose of specifying them, but they ought not to be dealt with by mere general words."

As regards the appointment of B. V. M. the evidence of his fitness appears quite satisfactory, but it would be a departure from the usual practice, and it would be setting a bad precedent to appoint a committee who had not been approved by the Master. Here the Master does not say that he only forbears to approve of B. V. M. because he resides out of the jurisdiction, but says that he cannot approve of him, because he resides out of the jurisdiction. The Master will no doubt be ready to amend his report by saying that he should have approved of B. V. M. if he had resided in England, and upon that being done the order appointing him may be drawn up as of to-day.

LUSH, L. J., concurred.

IN RE GOWAN: GOWAN V. GOWAN.

Husband and wife—Settlement, Order for—Form of settlement approved by Court.

[Dec. 6, 1880—17 Ch. D. 778. M.R.]

In this case a testatrix bequeathed a fund to the plaintiff "until he is married, the said sum then to be settled on his wife and children." This was a friendly suit brought to settle a question which had arisen as to how the sum bequeathed to the plaintiff should be settled, he having married.

JESSEL, M. R., after observing that what Fry, J., is reported to have said in *Oliver v. Oliver*, 10 Ch. D. 765, appeared to him to be contrary to the opinion expressed by Baggallay, L. J., in the case of *Cogan v. Duffield*, 2 Ch. D. 44, 49, quoted the said opinion, and *mut. mut.* (the fortune not being the wife's in this case) acted upon it.

The opinion of Baggallay, L. J., as quoted by the M. R., is as follows:—

"The mode of settling a wife's fortune which is approved by the Court is to give her the first life interest for her separate use, then a life interest to the husband, then, subject to powers

given to the husband and wife of appointing the fund among the issue of the marriage, it is given equally to such of the children as being sons attain 21, or being daughters attain that age or marry, or else to the children equally, with gifts over in favour of the others, if any of them being sons die under 21, or being daughters die under that age and unmarried."

[*The form of the judgment is given in extenso in the Law Reports.*]

BROOKE V. BROOKE.

Evidence—Notarial document—Imp. Chy. Proc. Act (15 and 16 Vict. c. 86) s. 22.

A deed, the execution of which has been duly attested by a colonial notary, although there may be no evidence that the attestation was for the purpose of using the deed in Court, is nevertheless a document "to be used in Court" within the above Imp statute, and the Court will take judicial notice of the notary's seal and signature.

[May 3—L. R. 17 Ch. D. 833.]

The deed which was tendered in evidence in the above case had been executed in Canada, and was signed by and attested by the seal of a notary public.

FRY, J.—A document is tendered to me which bears a notarial seal, being a deed of release. The only objection to that evidence is that the person appearing to act as a notary is not proved to be a notary.

The section under which it is sought to put the document in is the 22nd sec. of the Chan. Proc. Act, 1852. Now, the words of that section are somewhat peculiar. It provides that the Court shall take judicial notice of the seal and signature of a notary public in Her Majesty's Colonies attesting certain pleadings, affidavits. . . . "and all other documents to be used in the Court."

In my judgment the only true construction of the section is that it includes all documents to be used in the Court, and this is a document to be used in the Court. I shall therefore admit the document.

[NOTE.—Sec. 38 of our Evidence Act, R.S.O. c. 62, may be compared with Imp. 15 16 Vict. c. 86. s. 22: and especially the words in it,—*"for the purposes of . . . any cause, matter,*