

Irish Rep.]

JACK V. BURNE.—WATSON V. MUIRHEAD.

[U. S. Rep.]

101st section of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), which provides "that the Court or a judge shall have power to extend the time for proceeding to trial with or without terms." But the application was not made within the twenty days given by the defendants notice for bringing on the issue to be tried, and the learned judge therefore could not extend that which did not exist. *Martin, B.*, expressly held so at chambers, after taking time to consider: *Horner v. Spencer*, 1 F. & F. 412; and that is the only decision on the point. In *Lord Ward v. Lumley*, 5 H. & N. 656, the Court of Exchequer allowed further time in an appeal under the 37th section of the Common Law Procedure Act, 1854, though the application was made after the four days limited for the notice of appeal had expired; and the Court of Queen's Bench, in *Wishart v. Fowler*, 4 B. & Sm. 674, held that the Court of Bankruptcy had power under the 194th section of the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), to allow further time for registration of an arrangement deed, though the twenty-eight days limited for registration had elapsed; and there are decisions to the like effect on 3 & 4 Will. 4, c. 42, s. 39, enabling the Courts to enlarge the time for making awards: but in all these cases the words of the Acts are different from those in the present case; they none of them have the word "extend."

BOVILL, C. J.—I should be sorry to throw any doubt on the power of the judge to extend the time for proceeding to trial. Mr. Littler's observations would apply to the word "enlarge" as much as to the word "extend," and it has been expressly held that though an arbitrator cannot "enlarge" the time for his award after the expiration of the original time, the Court, under 3 & 4 Will. 4, c. 42, s. 39, may do so. The word "extend" I should think more extensive than "enlarge." As to *Horner v. Spencer*, a suggestion had been actually entered and judgment signed thereon: the report only states that the application should have been made within the twenty days, but as it does not set out the circumstances it is consistent with all that appears that my brother Martin may have only thought that under the circumstances the time should not be extended. Here my brother Byles no doubt acted with reference to the circumstances, and he had a discretion to do so.

WILLES, J.—It is quite for the discretion of the judge, and we do not at all overrule my brother Martin.

KEATING and MONTAGU SMITH, JJ., concurred.
Rule refused.

IRISH REPORTS.

COMMON PLEAS.

JACK V. BURNE.

Practice—Garnishee—Order for payment in interpleader suit. An order made in an interpleader suit, and entered as of record, according to the provisions of the 9 & 10 Vict. c. 64, s. 7, is a judgment within the meaning of the Common Law Procedure Act (Ireland) 1856, s. 63.
[C. P. (Ir.)—16 W. R. 367.]

This was an application on behalf of Joseph Kirkman and John Wilson, assignees for the

benefit of certain creditors of the defendant Walter Burns, for a garnishee order to attach a debt due by him to David Jack and Thomas McFarlane, two creditors for whose benefit Kirkman and Wilson were not assignees. From the affidavits filed on behalf of the applicants, it appeared that David Jack and Thomas McFarlane had obtained judgment in this cause for a sum amounting, together with costs, to about £30, which was still unsatisfied. Subsequently the defendant Walter Burne assigned all his estate and effects to Joseph Kirkman and John Wilson, for the benefit of his creditors; notwithstanding which, however, the plaintiffs, David Jack and Thomas McFarlane, caused an execution to be issued, under which the goods of the defendant Walter Burne were sold by sheriff of the county of Down. In consequence of a claim having been put in on behalf of the creditors by Joseph Kirkman and John Wilson, the sheriff applied for and obtained an interpleader order, whereby an issue was directed to be tried, wherein Joseph Kirkman and John Wilson were plaintiffs, and David Jack and Thomas McFarlane were defendants; and on the trial of the issue a verdict was had for the plaintiffs. An order was then obtained from Mr Justice Keogh, sitting in chambers, directing the sheriff to pay over the sum of £15, being the balance remaining in his hands out of the produce of the seizure and sale under the execution, to Joseph Kirkman and John Wilson, and the defendants David Jack and Thomas McFarlane to pay to them their costs of the interpleader motion, and proceedings under the order thereon.

Weir in support of the application.—By the 9 & 10 Vict. c. 64, s. 7, * it is enacted that orders made in pursuance of the act may be entered of record "to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment." It is submitted that the order in this case, which was entered of record as directed by the above enactment, is a judgment within the meaning of the 63rd section of the Common Law Procedure Act (Ireland), 1856.

MORRIS, J., on the case being mentioned on a previous day, directed the motion to stand until he should have had an opportunity of conferring with the other members of the court. On the application being renewed, the order was made.

UNITED STATES REPORTS.

SUPREME COURT.

WATSON V. MUIRHEAD.

A conveyancer, using ordinary diligence in examining and passing title, is not liable for want of skill.

Error to the District Court for the city and county of Philadelphia.

Opinion by SHARSWOOD, J.

The business of a conveyancer is one of great importance and responsibility. It requires an

* Corresponding to 1 & 2 Will. 4, c. 58, English, and compare our Con. Stat. U. C. cap. 30 sec. 14.—Eds. L. J.