

LAW STUDENTS' DEPARTMENT.

the attachment, the mortgage was therefore not void under sec. 89 of the Act, as being a fraudulent preference. *Ex parte Jones; In re Raymond*, 136.

Discharge—Where insolvent has not kept a cash book.

A trader who does not keep a cash book is not entitled to a discharge under the Insolvent Act of 1875. *Gilbert v. Girouard*, 148.

FRAUD.

Where charged in action against insolvent—Judgment by default—How to proceed next.

In an action brought by plaintiff against defendant (an insolvent), the declaration charged defendant with fraud under section 136 of the Insolvent Act of 1875, and, interlocutory judgment having been signed, a motion was made for an order for a writ of enquiry to issue to assess the damages, and for the Court to pronounce judgment on the fraud; but, *Held*, that the Court had no authority to make any such order.

Quere, as to what is the proper course to pursue in such a case. *Moss v. Kirkpatrick*, 220.

REPLEVIN.

Pleading—Estoppel.

In replevin plaintiff may shew, the same as he might in trover—that defendant by his acts is estopped from denying that the property in question is the plaintiff's, and if the alleged estoppel is *in pais*, it may be relied on in evidence without being pleaded.

A mere representation of a fact will not amount to an estoppel unless it was made with the intention of inducing another party to act upon it, and he does act upon it and alter his position. *Hegan v. Frederickson Boom Company*, 105.

TRESPASS.

Forcible entry by owner—Whether has right to eject by force a person whose possession was originally lawful, but who continues in, having no longer right to do so.

Where the defendant was the owner, and entitled to the immediate possession of

a dwelling house, occupied by the plaintiff's wife, who detained it, after demand, by refusing to give it up and locking the doors against the defendant's entry; *Held*, by a majority of the Court, (ALLEN, C. J., FISHER and WETMORE, J.J., WELDON and DUFF, J.J., dissenting) that the defendant was justified in forcing open the door, so locked—entering and taking possession of the house, and had thereby obtained such a lawful possession of it, as proved the allegation in his plea of justification, viz.: "that he was in possession of the dwelling house." *Napier v. Ferguson*, 255.

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FIRST INTERMEDIATE EXAMINATION: MICHAELMAS TERM, 1878.

Smith's Manual of Equity—Act Respecting the Court of Chancery.

1. In what case has the Court power to decree alimony?
2. Under what circumstances has the Court jurisdiction to relieve against a forfeiture for breach of a covenant to insure?
3. Describe the procedure by which issues in Chancery proceedings may be tried by a jury.
4. Define *accident*, and give an example in which Equity would grant relief.
5. In what cases will the Court relieve against the defective execution of a power? What is the essential distinction between a defective and a non-execution of a power?
6. Explain the application of the maxim, *Ignorantia legis non excusat*.
7. What was the distinction in regard to the effect of joining in receipts between Executors and Trustees?

SECOND INTERMEDIATE EXAMINATION: MICHAELMAS TERM, 1878.

Broom's Common Law—A. J. Acts, &c.

1. An attorney is retained to sue John Smith, and by mistake sues the wrong man, and puts the latter to the expense and trouble of a defence. Would the person sued have any remedy against the attorney, and why?
2. Illustrate and explain the rule, that "the law gives no private remedy for anything but a private wrong."
3. What is the general rule as to the liability of executors for the covenants and contracts of the testator (a) broken in his lifetime, (b) broken after his death?