

WITNESSES AND WITNESSES—PRACTICAL JOTTINGS.

capacity to gauge the veracity of a woman when she appeared in the box. In accord with this view the observations the other day at Owen Sound by a learned judge, when he said it was an established fact, recognised by the legal profession in general, that it was much more difficult to break down, in cross-examination, a false statement when made by a woman than when made by a man, the reason being that women have greater self-possession under such circumstances than men. It would seem as if the Common Law bench had never forgiven frail women for what Douglas Jerrold calls that matter of the apple. Somewhat more generous views have been expressed by some equity judges as for instance by the then Master of the Rolls, Lord Romilly, in *Thomas v. Finlayson*, 19 W.R. 255, where he said that the court had never made a man pay costs for believing the word of a woman, and he would not be the first judge to do so. But we fear that even equity judges have not recognised or adopted this line of decision to any great extent.

PRACTICAL JOTTINGS.

SIMILITERS.

Similiters are not abolished by the Common Law Procedure Act (Harr. 2nd ed. p. 132). Indeed, if the plaintiff takes issue on affirmative pleas of the defendant, it appears that he should add a similiter for the defendant (Paterson's Com. Law, vol. 1, p. 203). But if the plaintiff has served notice of trial, he is estopped from denying that the cause is at issue (*Wilkes v. Wilkins*, 1 P. R. 90; *Archibald v. Cameron*, 1 P. R. 138); and, although, if plaintiff joins issue on negative pleas of the defendant, it is not necessary to add a further pleading for the defendant, the cause being then at issue (Paterson, *ubi*

sup.), yet, in such case, if defendant wants a jury, and plaintiff has filed no jury notice, he may file and serve a similiter with a jury notice annexed, it being legitimate to use a similiter as a last pleading in this way (*Quebec Bank v. Gray*, 5 P. R. 31); and even if plaintiff has served a notice of trial with his joinder, yet defendant may do this (*McLaren v. McCuaig*, 8 P. R. 54). But plaintiff can forestall a defendant in respect of this, unless a defendant, who wishes for a jury, serves his jury notice with his pleas. For where the plaintiff's pleading is a mere negative to the defendant's, the plaintiff can, by the practice of the Courts, add a joinder for the defendant (R. S. O. c. 50, s. 117). If, then, the plaintiff joins issue, and files a similiter for the defendant, there now remains nothing to which the defendant can annex a jury notice, as there can only be one similiter (*Hyde v. Casmea*, 8 P. R. 137).

DISCOVERY OF DOCUMENTS.

R. S. O. c. 50, sec. 169, enacts that discovery may be ordered, "upon the application of any party to a cause or civil proceeding stating his belief upon affidavit, etc." This corresponds to sec. 50 of the Imp. C. L. P. Act, 1854 (17 & 18 Vict. c. 125), which enacts that discovery may be ordered, "upon the application of either party to any cause, etc., upon an affidavit by such party of his belief, etc." In *Hirschfield v. Clark*, 25 L. J. N. S. 113 (1856), and in *Christopherson v. Lotinga*, 33 L. J. N. S. 121 (1864), followed in our own Courts, in *Barwick v. De Blaquiére*, 4 P. R. 267, it was held that, under the above enactments, a discovery cannot be ordered except upon an affidavit by the party himself, that a judge of the Court has no power to dispense with such affidavit, and that an affidavit by the attorney of the party is not sufficient. In