Recent English Decisions.

PRACTICE—PRODUCTION BY CO-DEFENDANT.

In *Brown* v. *Watkins*, 16 Q. B. D. 125, Matthew and Smith, JJ., held that under the English Rules a defendant is not entitled to an order for discovery of documents against a co-defendant. In this Province it was held in *Brigham* v. *Bronson*, 3 C. L. T. 311, that a defendant is entitled to an order for production against a co-defendant who is in the same interest as the plaintiff.

EMBEZZLEMENT—CO-PARTNERSHIP MONEYS—SOCIETY FOR MUTUAL IMPROVEMENT.

The *Queen* v. *Robson*, 16 Q. B. D. 137, was a criminal prosecution for embezzlement of co-partnership moneys. The moneys in question were the property of the Bedlington Colliery Young Men's Christian Association, and it was held that the association was not a "co-partnership," and the conviction of the prisoner was therefore quashed.

COMPOUNDING A LARCENY.

A Court composed of Coleridge, C. J., and four *puisne* judges, held, in *The Queen* v. *Burgess*, 16 Q. B. D. 141, that it is a criminal offence for a person who is neither the owner of the stolen goods, nor a material witness for the prosecution, to make any agreement with a view to compounding the offence, and that the offence is completed by entering into any such agreement, and the compounder is not exonerated, even though the delinquent is subsequently prosecuted to conviction.

AMENDMENT OF DEFENCE—PREJUDICE TO PLAINTIFF.

In *Steward* v. *The Metropolitan Tramways Co.*, 16 Q. B. D. 178, Pollock, B., and Manisty, J., refused to permit an amendment of a defence. The action was brought to recover damages against defendants for allowing their tramway to remain in a defective and unsafe condition. The defendants by their defence denied negligence. More than six months after the delivery of their defence they applied to amend it by adding an allegation that by an agreement the liability to maintain the roadway had previously to the cause of action been transferred to the local authority. But the local authority was entitled to six months' notice of action and the time for giving it had expired, and the remedy against them, if any, was lost; and as plaintiff would be prejudiced by the allowance of the amendment under the circumstances, it was refused. See *Clark* v. *Wray*, 31 Chy. D. 68, noted *ante*, p. 97.

ORDER FOR TRIAL OF ONE QUESTION BEFORE ANOTHER—O. 36, R. 8 (ONT. RULE 256).

Smith v. *Hargrave*, 16 Q. B. D. 183, was an appeal from an order made under Ord. 36, r. 8 (Ont. Rule 256) directing a question of negligence to be first tried, and the question of damages to be postponed until afterwards. The amount of damages being a matter of detail, which would probably be referred to some other tribunal than a jury, the Court (Pollock and Manisty, JJ.,) held the order rightly made under the circumstances and dismissed the appeal.

LARCENY—MUTUAL MISTAKE—SUBSEQUENT FRAUDULENT APPROPRIATION.

The only remaining case to be noticed in the Queen's Bench Division is that of *The Queen* v. *Ashwell*, 16 Q. B. D. 190, which, besides deciding a curious point of criminal law, exhibits also the extraordinary care taken in England in settling any doubtful questions of criminal law as they arise. The case was argued first before five judges who differed in opinion, and it was then re-argued before no less than fourteen judges, and in the end they were equally divided in opinion. The question which gave rise to this extraordinary difference of opinion was a very simple one, so far as the facts were concerned. The prisoner asked the prosecutor for the loan of a shilling. The prosecutor gave the prisoner a sovereign, believing it to be a shilling, and the prisoner took the coin under the same belief. About an hour afterwards he discovered the coin was a sovereign, and, instead of returning it to the prosecutor, he kept it and spent it. The Court seems to have been unanimous that the prisoner was not guilty of larceny as a bailee, but Smith, Matthew, Stephen, Day, Wills, Manisty and Field, JJ., held he was not guilty of larceny at common law; while Coleridge, C.J., and Cave, Hawkins, Denman and Grove, JJ., and Pollock and Huddleston, B.B., held that he was. Denman, J., tried the case, and the prisoner having been convicted at the trial the conviction was affirmed.

In this country, whatever doubt may exist as to the offence in question being larceny, there can be no doubt that it would at all events be punishable as a misdemeanor under sec. 110 of *the Larceny Act*.