

RECENT ENGLISH PRACTICE CASES.

IN RE KNIGHT, KNIGHT V. GARDINER.

*Imp. O. 38, r. 4—Ont. Rule 304.**Affidavit—Cross-examination—Costs.*

[L. R. 24 Ch. D. 606.]

This rule applies to all proceedings whether at the trial of the action or elsewhere, and not only to the production of deponents for cross-examination before this Court at the trial of the action.

Hence, where in an administration action, one R. K., in answer to the usual advertisements, brought in a claim as heir-at-law of him whose estate was being administered, and several persons filed affidavits in support of his claim, when one of the plaintiffs gave notice to cross-examine, and R. K., the party in whose behalf the affidavits were filed, took out a summons for the appointment of a special examiner.

Held, that R. K. was not entitled to call upon the party requiring production of the deponents for cross-examination to pay their expenses in the first instance, according to the former practice before the Judicature Act.

IN RE LEE AND HEMINGWAY.

*Imp. O. 55, r. 1—Ont. Rule 428.**Costs—Discretion—Special Act.*

[L. R. 24 Ch. D. 669.]

When the purchase-money of land, taken by a company under compulsory powers conferred on them by a special Act passed before the Judicature Act, has been paid into Court by reason of the disability of the person entitled to the land, the Court has, under the general discretion as to costs given to it by this Order, power to order the company to pay the costs of a petition for payment of the money out to a person absolutely entitled, even though the special Act contains no provision to that effect.

Ex parte Mercer's Company, L. R. 10 Ch. D. 481 followed.

SMITH V. ARMITAGE.

Trial—Administration action—Wilful default—Practice prior to Judicature Act.

[L. R. 24 Ch. D. 727.]

The plaintiffs instituted an action for the administration of the will of G. A., and in their statement of claim made sundry charges of wilful default and improper conduct against the defendants.

When the action came on for trial the plaintiffs declined to go into these charges, not being prepared to do so, but asked for a decree for ordinary

administration accounts and inquiries, and that they might be at liberty in the course of taking these accounts and inquiries to proceed with the case of wilful default raised by the pleadings.

Held, that this could not be allowed. All the the plaintiffs could have was the ordinary administration decree, and the action should be dismissed altogether with costs so far as it went for more than the ordinary decree. It would be most unjust to keep such charges hanging over the defendants.

Semble, that the Court has a discretion in every case to postpone enquiring into the conduct of trustees, and to allow the enquiry to stand over in such a manner as may appear reasonable, and it is not absolutely necessary for the Court in every case to decide all the issues at once which may be brought before it at the hearing. It would be competent to the Court if it saw good reason to try the case in part and to adjourn it in part. But it would require a very strong case to make it do so; and the hearing is the proper time at which allegations of fraud should be disposed of. Except in the strongest case, and for the strongest reasons, the Court ought not to allow parties to come with such allegations with no evidence to support them, and then to ask the Court to refer questions such as these for disposal by the chief clerk, or in any other way.

Semble, also, that it is important in matters of practice such as this not to go back to any old practice of the Court which may have existed before the Judicature Act, but to found decisions on cases decided since the Act, because it is obvious that when the pleadings have been materially altered, the rules of the old practice may not be applicable.

BOOTH V. TRAIL.

Imp. O. 45, r. 2 (1875)—Ont. r. 370.

[L. R. 12 Q. B. D. 8]

A sum already accrued due to a retired police constable, in respect of his superannuation allowance, under *Imp. 11-12 Vict. c. 14*, may be attached in execution.

LORD COLERIDGE, C.J.—I am of the opinion that the judgment creditor is entitled to an order attaching so much of the pension as had already accrued due at the date of the summons. . . . So much of the application as seeks to attach the pension prospectively as it falls due from time to time must be refused. It seems to be implied in the judgments in *Webb v. Stanton*, L. R. 11 Q. B. D. 518, that an order may be made attaching the payment already due. A sum in the hands of the garnishees, which they, in some way or other, can