

RECENT ENGLISH PRACTICE CASES.

they find that the number which will be required is about one hundred.

Your Committee recommend that the reports be supplied to the members of the Manitoba Law Society at the price of \$17.50 a year in advance, provided that not less than eighty sets be taken, the sets to comprise the Appeal Reports, the Ontario Reports and the Practice Reports, reserving to Convocation the right to alter the price at the end of any year.

All which is respectfully submitted.

On the motion of Mr. Cameron it was ordered,

That the thanks of Convocation be given to the Rev. Dr. Barclay, for his gift to the Society of a copy of his sermon, preached on the occasion of the death of Chief Justice McLean.

Convocation adjourned.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

BURSTALL V. FEARON.

Imp. O. 50—Ont. O. 44.

Revivor—Death of sole Plaintiff—Administration Proceedings.

[L. R. 24 Ch. D. 126.]

A person served with notice of an administration judgment, and who has obtained liberty to attend the proceedings under it, is in the same position as a party to the action, and is entitled to obtain an order of course to revive the action on the death of the sole plaintiff.

BUTCHER V. POOLER.

Imp. Jud. Act, sec. 49, O. 55, r. 1—Ont. Jud. Act, sec. 32, r. 428.

Partnership suit—Costs of unsuccessful claim—Appeal for costs.

[C. A. L. R. 24 Ch. D. 173.]

On the death of one member of a certain partnership, an action was instituted by his executrix, in which a decree was made to administer the partnership estate. In the course of the administration a dispute as to

facts arose, which was first dealt with by the Chief Clerk, and then adjourned into Court, and the decision was adverse to the plaintiff. Bacon, V.C., decided against her, but ordered the costs of the enquiry to come out of the estate. The defendants, the surviving partners, now appealed from this order as to costs.

The question was whether the Court had jurisdiction to hear the appeal.

Held, that the case did not come within the rule in *Foster v. Great Western Railway Company*, L. R. 8 Q. B. D. 25, 515, that the Court cannot make a successful defendant pay the costs of a plaintiff who has wholly failed; but that it was within the discretion of the Court to order all costs reasonably incurred in ascertaining the fund to be paid out of the fund, and that an appeal would not lie.

NOTE.—*The appellants argued in the above case that there was no jurisdiction to make a successful party pay costs, citing Johnstone v. Cox, L. R. 19 Ch. D. 17; and Foster v. Great Western Railway Company, L. R. 8 Q. B. D. 25, 515. The case is a good one to refer to on the question of appealing in respect to costs.*

IN RE AGAR ELLIS, AGAR ELLIS V. LASCELLES.

Imp. Jud. Act, sec. 25, sub.-s. 10—Ont. Jud. Act, sec. 17, sub.-s. 9.

Infants—Habeas Corpus—Prevalence of Equity.

[C. A. L. R. 24 Ch. D. 323.]

It is not correct to say the law is altered by this section. The Courts of law and equity administered the law alike in proceedings under writs of *habeas corpus*.

PRESTNEY V. CORPORATION OF COLCHESTER.

Imp. O. 31, rr. 11, 12—Ont. Rules 221, 222.

Production of documents—Place of production.

[C. A. L. R. 24 Ch. D. 376.]

Where an order has been made for production of documents at a particular place the Judge or his successor may at any time make a fresh order appointing a different place, if the circumstances render it advisable. And although such an order may be appealed from