

## RECENT ENGLISH DECISIONS.

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The *Law Reports* for April comprise 18 Q. B. D. pp. 449-572; 12 P. D. pp. 105-118, and 34 Chy. D., pp. 423-581.

## PRACTION—INTERPLEADER—JUS TERTII.

The case of *Richards v. Jenkins*, 18 Q. B. D. 451, is one of some importance on the practice in interpleader proceedings by the Sheriff. This case has been already noted when before the Divisional Court (vol. 22, p. 376). The decision now reported is that of the Court of Appeal (affirming the Queen's Bench Division). The facts were simple. The claimant had let the goods in question for hire, and subsequently became bankrupt. He did not inform the trustee in bankruptcy that he owned the goods, and the hirer, in ignorance of the bankruptcy, continued to pay the claimant for their hire. While in possession of the hirer the goods were taken in execution under a judgment against him. And the question was whether the execution creditor could set up the right of the trustee in bankruptcy in order to defeat the claimant. This, the Court of Appeal decided in the affirmative, holding that, even assuming the execution debtor was estopped from denying the title of the claimant to the goods, such estoppel did not bind the execution creditor.

Though affirming the decision, the Court of Appeal did not altogether adopt the reasoning of the court below. In the latter court the right of the execution creditor to set up a *jus tertii* was put on the ground that as against the claimant he was to be deemed to be in possession, but Lord Esher, M.R., repudiates that reasoning as untenable; and the judgment of the Court of Appeal proceeds on the ground that the goods being in possession of the execution debtor at the time of seizure, they were *prima facie* his property, and the question in the issue being whether the goods were the goods of the claimant as against the execution creditor, the claimant could not succeed unless he showed a good title.

## CRIMINAL PRISONER—STATUTORY OFFENCE HOW FAR A CRIME.

*Osborne v. Milman*, 18 Q. B. D. 471, is a decision of the Court of Appeal reversing the judgment of Denman, J., which we noted

vol. 22, p. 376. The question was whether a person who had been committed to gaol on a summary application for practising as a solicitor without being duly qualified, contrary to a Statute, was to be deemed a criminal prisoner. Denman, J., held that as his imprisonment had been ordered on a summary application without indictment he was not a criminal prisoner; but this conclusion the Court of Appeal was unable to accede to. In the view of the Court of Appeal, the procedure by which the punishment was awarded was immaterial. The question was governed by the consideration whether the offence was or was not a crime, and the offence in question being one which would clearly have been indictable as a misdemeanour, and punishable by imprisonment, it was held to be a crime.

## CRIMINAL LAW—EVIDENCE—ATTEMPT TO COMMIT RAPE—EVIDENCE OF PREVIOUS CONNECTION BETWEEN PROSECUTRIX AND PRISONER.

The case of *The Queen v. Riley*, 17 Q. B. L. 481, sets at rest a question of evidence, which Mr. Justice Stephen left in doubt in his work on Evidence. (See "Stephen's Evidence," art. 134.) The prisoner was indicted for an assault with intent to commit rape. The prosecutrix denied on cross examination having voluntarily had connection with the prisoner prior to the alleged assault, and a case was reserved on the point whether evidence on the part of the prisoner could be received to contradict her by proving such prior connection. Mr. Justice Stephen laid it down that in such a case "She probably may be contradicted." This case determines definitely that such evidence is admissible.

## FOREIGN NEGOTIABLE INSTRUMENT—CONFLICT OF LAWS—BONA FIDE HOLDER—RIGHT OF.

*Picker v. The London and County Banking Co.*, 18 Q. B. D. 515, was an action of detinue to recover possession of certain Prussian bonds, which, by the law of Germany, were negotiable instruments. The bonds were stolen from the plaintiff, and subsequently came into the possession of the defendants *bona fide*. It was held by the Court of Appeal (affirming A. L. Smith, J.) that in the absence of evidence to show that such bonds were by the custom of merchants treated as negotiable instruments in England, a *bona fide* transferee thereof could not acquire a good title thereto.