

cited in Buller's "Nisi Prius," 7th ed., p. 335, he considered "unsatisfactory," and wrong in principle, and he refused to follow it. Fry, L.J., on the other hand, considered that where an action is tried by a jury, under the rules the costs are to follow the event, unless the Judge or the Court "shall for good cause otherwise order." The plaintiff consequently has a right to costs against both defendants, and it is for the Court or Judge, and not the Master, to modify the effect of the rule. At p. 536 he says "In my opinion the effect of the rule which has been laid down by the Master of the Rolls would be to vest in the Master a discretion which, by virtue of the rule, belongs only to the Judge."

PROBATE—WILL—EXECUTION IN THE FORM OF A DEED—ATTESTING WITNESS UNABLE TO RECOLLECT EXECUTION.

In *the goods of Colyer*, 14 P.D. 48, probate was granted of a will executed in the form of a deed, notwithstanding that the witnesses, though proving their signatures and that of the testator, were unable to swear positively as to the circumstances of its execution.

PROBATE—WILL—PARTIAL, OR TOTAL REVOCATION

In *Treloar v. Lean*, 14 P.D. 49, the facts were that the testator, after duly executing his will, which was in five sheets, each of which was signed by himself and initialled by the attesting witnesses, took out three sheets and substituted three new ones, which he signed, but which are not attested. He did not alter the date of the will nor did he re-sign it, nor was it re-attested. Butt, J., held that the will was not entitled to probate, and with the consent of the parties, pronounced for an intestacy.

VENDOR AND PURCHASER—POWER OF SALE—COMPANY—SALE BY MORTGAGEE TO COMPANY IN WHICH HE IS A SHAREHOLDER.

*Farrar v. Farrars*, 40 Chy.D. 395, was an action brought by a mortgagor to set aside a sale made by the mortgagee under the power contained in the mortgage, on the ground that the sale had been made to a Company in which the mortgagee was a shareholder. It was held by Chitty, J., and affirmed by the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), that the sale could not be set aside merely on the ground of the relationship between the mortgagee and the purchasers, but that the existence of that relationship, which was known to the purchasers, created such a conflict of interest and duty as to throw upon the purchasers the burden of upholding the sale, and that the Company had discharged themselves of this burden by showing that the mortgagee had taken all reasonable pains to secure a purchaser at the best price, and that the price given was not at the time inadequate, though more might have been obtained by postponing the sale. Lindley, L.J., who delivered the judgment of the Court of Appeal, says at p. 409: "A sale by a person to a corporation of which he is a member is not, either in form or in substance, a sale by a person to himself. To hold that it is would be to ignore the principle which lies at the root of the legal idea of a corporate body, and that idea is that the corporate body is distinct from the persons composing it. A sale by a member of a corporation to the corporation