The President (Sir F. H. Jeune) made the grant as prayed, and fixed the amount of security to be given by the applicant at £5,500. (L. J. vol. 31, p. 371.)

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SADLER (Appellant) v. THE GREAT WESTERN RAILWAY COMPANY (Respondents).

[House of Lords, May 11.

*Practice — Pleading — Parties— Joinder of defendants—Nuisance arising from concurrent acts of two independent parties —Rules of the Supreme Court, Order XVI., Rule 4.*

The plaintiff brought an action of nuisance in the Queen's Bench Division against his two next-door neighbours, the nuisance arising from the concurrent but independent acts of the two defendants.

C. M. Warmington, Q.C., E. Russell Roberts, and Chester Jones for the appellant.

H. H. Asquith, Q.C., and Alfred Lyttleton, for the respondents, were not heard.

Their Lordships (Lord Halsbury, L.C., Lord Watson, Lord Herschell, Lord Shand and Lord Davey) affirmed the decision of the Court of Appeal (p. 7 of this vol. of *The Barrister*) that the two defendants could not be joined in one action, and dismissed the appeal, with costs. (L. J. vol. 31, p. 340.)

* * *

IN RE ELLIOTT. KELLY v. ELLIOTT.

[Chitty, J., June 24.— Chancery Division.

*Will—Condition—Repugnancy.*

Devise and bequest to plaintiff of specified tea plantations and of all other the testator's property, estate, and interest of whatsoever nature and wherever situated which he should die possessed of or entitled to, and appointment of plaintiff as sole executrix, followed by the words: "On any sale by the said (plaintiff) of the said tea plantations I will and direct her to pay my brother, John Elliott, the sum of £1,000 out of the proceeds of such sale; also the further sum of £500 out of the proceeds of such sale to Isabella Boog," his sister.

The question was as to the effect of these words.

E. W. Byrne, Q.C., and A. R. Kirby, for the plaintiff, contended that the direction to pay the two sums was void for repugnancy, absolute dominion over property implying absolute dominion over the proceeds of sale thereof. They cited King v. Burchell, Amb. 379, and In re Rosher, 52 Law J. Rep Chanc. 722; L. R. 26 Chanc. Div. 801.

H. Terrell, for the brother and sister, contended that the legacies were absolute, and that the plaintiff was bound to sell.

Chitty, J., held that, on the true construction of the will, no obligation was imposed on the plaintiff to sell; that the testator's intention was simply that the sums should be paid only out of the proceeds of sale if, and when, the plaintiff thought fit to make a sale; and that the brother and sister had no charge on the plantations. He also held that as the owner of property had, as an incident of his ownership, the right to sell and to receive the whole of the proceeds for his own benefit, the direction that, if he sold, a part only of the proceeds should belong to him, and the residue go to other persons, was repugnant and void. This