

RECENT DECISIONS AND THE CURRENT REPORTS.

the agreement between the parties. A sale of timber to be removed in ten years may mean a sale of so much of the timber as is removed within that time, and what is not so removed is to be considered as not sold.

The head note in *Haldan v. Beatty*, 40 U. C. R., 110, is scarcely perfect. It might, we think, be amended by a slight change, thus: The executor of one W., having paid money to defendant as a legatee under the will, and the will with the probate having been afterwards set aside by the Court of Chancery, the plaintiff, as administrator, was held entitled to recover the money from the legatee (or, *semble*, from the executor).

One objection to the conviction decided in *Regina v. Cavanagh*, 27 C. P. 537, is contrary to an earlier decision of the same Court, not cited in the later case. In *Regina v. Strachan*, 20 C. P., 182, it was held that in a conviction for selling liquor without a license, it was not necessary to state the name of the person to whom the liquor was sold. In *Regina v. Cavanagh*, the Court thought that the omission of the name would have been a fatal objection, but that it was remedied by certain statutes referred to. Upon examination of the cases it will be seen that the two holdings are irreconcilable.

It is rather dangerous for a reporter to state in a head note that a certain other case has been over-ruled, but we think the head-note of the report of *Wiley v. Smith*, 1 App. R., 179, should have mentioned that the cases of *Graham v. Smith*, 27 C. P., 1, and *Howell v. Alport*, 12 C. P., 375, were thereby over-ruled. Cases questioned or dissented from are properly mentioned by the English reporters: *a fortiori* should attention be called to cases that are extinguished as authorities.

In *Harris v. Smith*, 40 U. C. R., 52, the Chief Justice of Appeal adverts to the language of the plea as justly bringing

it within the old rule, "the plea of every man shall be construed strongly against him that pleads to it, for every man is presumed to make the best of his own case." Of late very serious innovations have been made upon this canon of pleading both at common law and in equity. In *Workman v. The Royal Insurance Company*, 16 Gr., 190, it is said that when the Court sees from the whole of the allegations that the pleader must have meant his language in a sense not against him, it shall not be taken in a sense against him. Thus the ambiguity is removed by what is seen to be the scope and intent of the pleader. This is perhaps the case alluded to by the present Chancellor in *Grant v. Eddy*, 21 Gr., 573, where he repeats the same views. In this latter case Blake, V. C., lays down three rules of construction which clearly mark the great modification the old maxim of pleading has undergone since the abolition of special demurrers.

Very much akin to this is the gradual disintegration of the ancient cognate maxim as to construing a deed most strongly against the grantor. Upon this change, the Master of the Rolls has observed with his usual felicity in *Taylor v. The Corporation of St. Helens*, 25 W. R., 887, "I will take the liberty of making an observation as regards a maxim to be found in a great many text works, and I am afraid also in a great many judgments of ancient date, and that is that a grant, if there is any difficulty or obscurity as to its meaning, is to be read most strongly against the grantor. I do not see how, according to the new established rules of construction as now settled by the House of Lords, that maxim has any particular or special application at the present day. The rule is to find out the meaning of the instrument, using the ordinary and proper means of construction. If you find out its meaning you do not want the maxim, because you have already done so without any